

Par. 1. **Material Transmitted and Purpose** – Transmitted with this Manual Letter are changes to Service Chapter 450-01, Medicaid Estate Recovery Policy. These changes also incorporate a change made by the 2011 Legislative Assembly to N.D.C.C. § 50-24.1-02.3, to include language concerning funeral or burial expenses. Also included is the current version of N.D.C.C. § 50-24.1-07, which now includes reference to permanently institutionalized individuals, and other references to permanently institutionalized now included in this manual.

Par. 2. **Effective Date** – December 16, 2011

Definitions 450-01-01

1. 450-01-01 – Definitions. Adding definitions of Permanently Institutionalized and Transfer on Death.

Permanently institutionalized

Any individual who is in a long term care living arrangement, who is under the age of 55 years, has resided in a facility for six consecutive months, and has received written notice that they are considered to be permanently institutionalized, unless an appeal has determined otherwise.

Transfer on death

A transfer of real property that does not take effect until the death of the grantor, as authorized pursuant to N.D.C.C. ch. 30.1-32.1, Uniform Real Property Transfer at Death Act.

Authority 450-01-05

2. 450-01-05 – Authority. Correcting reference to the federal law citation, and including reference to PACE, Permanently Institutionalized, and Clawback in the state law citation.

Medicaid estate recovery is authorized and restricted by federal law, 42 U.S.C. § 1396p(b) and 42 U.S.C. § ~~1396u(c)(1)(A)~~ 1396u-5(c)(1)(A), and by state law, N.D.C.C. §§ 50-24.1-02.3 and 50-24.1-07, including recovery for the Program of All Inclusive Care for the

Elderly (PACE), the Permanently Institutionalized, and Clawback. General assistance recovery is authorized by N.D.C.C. § 50-01-21. Basic Care Assistance, Expanded SPED, and Adult Foster Care recovery is authorized under N.D.C.C. § 50-24.5-08. Human Service Center and State Hospital services recovery is authorized under N.D.C.C. § 50-06.3-07. The "probate code," N.D.C.C. Title 30.1, is applicable to all North Dakota estate proceedings.

Filing Claims in Decedents' Estates 450-01-15-01-10

3. 450-01-15-01-10 – Filing Claims in Decedents' Estates. Inserting a paragraph between state staff and county staff; and, inserting references of county staff informing state staff of a transfer on death deed and of a PACE client death.

State staff file claims in decedents' estates and, as requested, provide verification of the basis for claims made.

County staff inform the state staff if the county is aware of an a transfer on death deed or any other estate, property, etc., and. County staff inform state staff PACE administrator of the death of a PACE client. County staff inform state staff if the county knows that family members will wait out the three-year period before filing a probate.

Age of Medicaid Recipients 450-01-20-01-01

4. 450-01-20-01-01 – Age of Medicaid Recipients. Including reference to permanently institutionalized individuals under age 55.

A claim may not be made for Medicaid benefits except from the estate of the recipient or the recipient's spouse for benefits correctly provided:

1. On and after October 1, 1993, to individuals age fifty-five or older; ~~or~~

2. Before October 1, 1993, to individuals age sixty-five and older; and
3. Effective November 1, 2010, to permanently institutionalized individuals under age 55.

Traced Assets 450-01-20-01-25

5. 450-01-20-01-25 – Traced Assets. Including a note in a new paragraph concerning the exemption of certain Indian monies.

A claim for recovery of Medicaid benefits correctly provided against the estate of an initially surviving spouse of a deceased Medicaid recipient may be enforced to the extent the estate of the initially surviving spouse is comprised of assets that may be traced to assets in which the Medicaid recipient once has an interest, to the extent of that interest. In accordance with N.D.C.C. § 50-24.1-07(5), "[a]ll assets in the decedent's estate of the spouse of a deceased medical assistance recipient are presumed to be assets in which that recipient had an interest at the time of the recipient's death."

NOTE: Certain Indian income, resources, and property are exempt from Medicaid estate recovery.

Limits on Medicaid Collections from Estates 450-01-20-05

Insolvent Estates 450-01-20-05-01

6. 450-01-20-05-01 – Insolvent Estates. Including the language of the 2011 Legislative Assembly addressing references to permanently institutionalized.

If a decedent's estate has insufficient property to pay all claims and debts (is insolvent), claims are paid in order of priorities established by law.

"On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or other medical institution ~~--- and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home,~~ or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient ~~--- following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be,~~ must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of

1. Funeral expenses not in excess of three thousand dollars;
2. Expenses of the last illness, other than those incurred by medical assistance;
3. Expenses of administering the estate, including attorney's fees approved by the court;
4. Claims made under chapter 50-01 [General Assistance];
5. Claims made under chapter 50-24.5 [Basic Care Assistance, Expanded SPED, and Adult Foster Care]; and
6. Claims made under chapter 50-06.3 [Human Service Centers] and on behalf of the state hospital; and

7. Claims made under subsection 4 [of section NDCC 50-24.1-07 – Clawback].”

Funeral Expenses 450-01-20-05-05

7. 450-01-20-05-05 – Funeral Expenses. Adding subsection 4 as included in N.D.C.C. § 50-24.1-02.3 in the 2011 Legislative Assembly; adding a statement as to funeral luncheons not being included as a part of the estate; and correcting a typographical error.

Funeral expenses may be paid from funds set aside for that purpose under Medicaid or SSI rules.

1. If funds have been set aside for funeral expenses, a claim [by a relative or funeral home] may not be made for funeral expenses against the estate except to the extent the funds set aside for the funeral total less than \$6,000 [principal].
2. If funds have not been set aside for funeral expenses, up to \$3,000 may be used for that purpose from the estate.
3. If an amount less than \$6,000 (principal) has been set aside, not including interest, estate assets may be used, provided that no more than a total of \$6,000 may be paid from the funeral set-aside and estate assets in combination, and no more than a total of \$3,000 in estate assets may be used for funeral expenses.
4. Any amount in a preneed funeral service contract, prepayment, or deposit designated under section 50-24.1-02.3, which is not used for funeral or burial expenses, must be returned to the estate of the medical assistance recipient and is subject to recovery by the department.

PLEASE REFER TO THE EXAMPLES IN THIS SECTION.

Costs of flowers, grave markers, headstones, gifts to clergy or soloists, and any other similar funeral expenses, may be paid from

either a funeral set-aside or from the decedent's estate, provided the established total cost limits are not exceeded. Memorial monies may also be used for funeral expenses as they are not part of the estate. A funeral lunch is not considered to be a part of the funeral expenses.

Term insurance is an exempt asset excluded for Medicaid eligibility purposes, and is not subject to estate recovery. Because it is excluded for eligibility purposes, it is an asset that is not available for designation as funeral expenses. ~~Inquires~~ Inquiries should be directed to the state estate recovery staff if the beneficiary named is the estate or the department.

Joint Tenancy Property 450-01-25-10-10

8. 450-01-25-10-10 – Joint Tenancy Property. Changing reference of Joint Tenancy Property to Joint Tenancy Financial Accounts in title of manual section 450-01-25-10-10.

Joint Tenancy ~~Property~~ Financial Accounts

Motor Vehicles and Mobile Homes 450-01-25-10-15

9. 450-01-25-10-15 – Motor Vehicles and Mobile Homes. Removing Section 450-01-40-10, the North Dakota Department of Transportation's form affidavit; referring the counties to the Department's form affidavit for use if there is a title, and the Department may present its affidavit for collection of personal property in twenty days instead of thirty days as is indicated on the DOT's form affidavit; and referencing joint tenancy with the right of survivorship.

Affidavits for collection should be used to obtain valid titles to motor vehicles and mobile homes. ~~The North Dakota Department of Transportation has a form affidavit for collection (See Section 450-01-40-10) available on its website, and use of that form is recommended if you have~~ If there is a title, use the department's affidavit for collection. If you do not have a title, the Application for Certificate of

Title & Registration of a Vehicle (See Sections [450-01-40-01](#) and [450-01-40-15](#) and ~~[450-01-40-10](#)~~) should be used to obtain a title. County agency staff who need to obtain a clear title to a motor vehicle or mobile home should consider:

1. Whose name is on the existing title? County agency staff may use an affidavit for collection if the motor vehicle or mobile home was owned solely by the decedent, or by tenancy in common (a vehicle titled with "and" or "or"), but not by joint tenancy ~~or life estate with the right of survivorship~~.
2. An affidavit for collection is appropriate for a motor vehicle or mobile home only if the county agency has or can obtain physical possession of the property.
3. A motor vehicle or mobile home obtained by affidavit for collection must thereafter be converted to cash. Affidavits for collection should not be used to obtain such property if it has limited value, or if selling it may be difficult due to condition or other factors.

APPENDIX 450-01-40

Affidavit for Collection of Personal Property of the Decedent – ND Dept. of Transportation – Motor Vehicle Division 450-01-40-10

10. 450-01-40-10 – Affidavit for Collection of Personal Property of the Decedent – ND Dept. of Transportation – Motor Vehicle Division. Removing this section of the manual and any references thereto; and removing the form.

~~**Affidavit for Collection of Personal Property of the Decedent – ND Dept. of Transportation – Motor Vehicle Division 450-01-40-10**~~